



Town of Arlington
Department of Health and Human Services
Office of the Board of Health

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**Board of Health Meeting Minutes
Wednesday, March 8, 2017
Mural Room
Arlington Senior Center
5:30pm**

Board Members in Attendance: Dr. Marie Walsh Condon, Dr. Kevin Fallon, Mr. Kenneth Kohlberg

Staff in Attendance: Christine Bongiorno, Director, Natasha Waden, Health Compliance Officer, Kylee Sullivan, Health Compliance Officer, Charlotte Gray, Public Health Associate, Ivy LaPlante, Director of the Youth Health and Safety Coalition

Others in Attendance: Kelda Fontenot, Ernest Fontenot, James DiTullio, David Carr, John Martin, Shajid Shaikh, Jim Ballin

Recording Secretary: Kylee Sullivan, Board of Health

Meeting called to order by Dr. Marie Walsh Condon at 5:30 pm.

A **Motion** was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Kevin Fallon to accept the February 1, 2017 meeting minutes as submitted.

Vote: Motion approved unanimously (3 – 0)

Hearing: Tobacco Sales Violation – Galaxy Food Mart

Ms. Natasha Waden, Health Compliance Officer, informed the Board that during a recent tobacco compliance check, a tobacco sales violation occurred at Galaxy Food Mart on January 30, 2017, whereby a 17 year old male purchased a pack of Marlboro Reds. Ms. Waden explained that this was the first sales violation at this establishment since the enactment of the new Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products on July 1, 2013. Establishment owner, Mr. Shajid Shaikh, shared his employee training practices regarding properly identifying under-aged customers. He told the Board that a new employee made the sale and that she did not understand the steps to properly identify under-aged customers despite training. Dr. Marie Walsh Condon asked Mr. Shaikh what he plans to do moving forward so a situation like this does not re-occur. Mr. Shaikh responded that he will now require employees to ask for ID for all customers, regardless of age. Dr. Walsh stated that the Department will be in contact with Mr. Shiakh as to when the suspension will begin. Ms.

Waden stated that a formal letter would be sent to the owner outlining the exact dates for the suspension and that staff from the Department would be out during that time to verify that all tobacco and nicotine delivery products have been removed from the shelves.

A motion was made by Mr. Kohlberg, which was seconded by Dr. Fallon, to enforce the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products resulting in a \$100.00 fine and a 7 consecutive day tobacco permit suspension issued to Galaxy Food Mart.

Vote: The Board voted unanimously (3 – 0) in support of this motion.

Presentation: Plastic Bag Ban Warrant Article

Ms. Bongiorno introduced the Plastic Bag Ban Warrant Article stating that if enacted, the ban would be enforced by the Health Department. She stated that many other communities in Massachusetts have banned the use of one-time plastic shopping bags and it has proven to be effective and does not require a lot of resources to enforce.

Warrant Article proponent, Mr. Jim DiTullio, addressed the Board and stated 42 communities have enacted similar bans and that ten additional communities are in the process of proposing the ban. Mr. DiTullio then went on to provide the Board with an overview of the Warrant Article. He stated that the plastic bags affected by this ban would only be single-use plastic bags that are used at check out. He added that this ban would also apply to restaurants with bags used for takeout and leftovers. Mr. DiTullio discussed that paper bags and some types of plastic bags – such as those used for produce and baked goods – will be exempt from this ban.

Mr. DiTullio stated that this ban is simple and modeled after the ban enacted in Somerville and stated that Massachusetts is the second state in which the largest number of communities have banned plastic bags; second to only California which has a statewide ban. Mr. DiTullio added that there is a movement in Massachusetts to ban plastic bags and that this trend will only continue. He described the environmental harm that results from single-use plastic bags such as the effect they can have on animals and their contribution to water pollution. Mr. DiTullio concluded by discussing the specific issues in Arlington resulting from plastic bags, including litter, issues with recycling, and toxins that are produced when plastic bags are incinerated at waste facilities.

Mr. Jim Ballin presented pictures of plastic bags littered around Town. He stated that a ban will likely be proposed at the state level within the next five years so if Town Meeting votes to support this Warrant Article then our retailers will have a head start. Mr. Ballin explained how similar bans in Cambridge and Somerville have not had negative impacts on retailers nor customers, especially with retailers selling reusable bags and customers using such bags. Mr. Ballin stated that each plastic bag costs 2-5 cents for customers but this is typically unknown because the cost is included in their bill. Dr. Fallon inquired if this ban would affect residents' ability to clean up and dispose of dog waste. Mr. Ballin stated that there will still be other plastic bags available to residents such as bread and produce bags that will enable proper disposal of dog waste. Mr. Ballin discussed an implementation schedule that would be fair for all establishments in town affected by the ban. Mr. Ballin explained that implementation for big businesses would take effect on March 1, 2018, while there would be a delayed implementation for smaller businesses starting on July 1, 2018.

Mr. Ballin explained that paper bags have fewer environmental impacts post production than plastic bags, but reusable bags are the best option. He added that, regardless of advertising, there are no biodegradable plastic single-use bags. Mr. Ballin stated that this plastic bag ban does not include a fee for single-use paper bags, where a consumer would have to purchase a paper bag for their items, as this is not allowed by the State. Because Massachusetts is a home rule state; cities are allowed to charge a fee for single-use paper bags, but towns are not. Mr. Ballin stated that this ban is not only supported by the Arlington Recycling Committee, but also by retailers in Town who have engaged in conversations regarding the matter. Mr. Kohlberg thanked the presenters for spearheading this ban and for all of their hard work.

A Motion was made by Mr. Kohlberg, which was seconded by Dr. Fallon, to support the Plastic Bag Ban Warrant Article.

Vote: The Board voted unanimously (3 – 0) in support of this motion.

Hearing: Housing Code Violation – 6 Rawson Road

Inspector Waden summarized this case for the Board by stating that the dwelling is zoned as a two family house but there is an additional unit in the basement that was advertised on the housing rental website “Airbnb.” Inspector Waden added that the basement unit was condemned by this Department in 2012 based on violations of the Massachusetts State Sanitary Code. She explained that currently the unit does not pose an imminent threat because the violations observed during an inspection dated February 7, 2017 consisted of a ceiling height that is just under 7 feet and the absence of some electrical outlet covers in the unit. Inspector Waden further explained that this unit is in violation of Town zoning laws and therefore the Health Department has informed the Building Department of this case. Inspector Waden informed the Board that Building Inspector Rick Vallereli is pursuing the issue due to the illegal nature of the apartment. Inspector Waden introduced parties involved in the case who were present at the meeting; Attorney David Carr was present to represent property owner Dawn Klippel and occupant Dennis Crow, and occupant Kelda Fontenont was present to represent herself.

Dr. Walsh asked Inspector Waden if the same conditions were present in the February 7, 2017 inspection as the ones cited in the 2012 emergency condemnation order. Inspector Waden explained that the same conditions were not present. The conditions that rendered the emergency condemnation in 2012 were related to inoperable heating facilities, chronic dampness, and deteriorated asbestos-like material around piping inside the unit. Dr. Walsh asked Ms. Fontenont for clarification regarding the current violations in the basement unit. Ms. Fontenont provided the Board with pictures of the unit and requested another condemnation of the unit due to its egregious nature. She added that Mr. Crow has not attempted to bring the unit into compliance with the code since receiving the Order Letter sent by the Health Department. Additionally, Ms. Fontenont asked to reinstate a violation of chronic dampness in the unit even though such conditions were not observed during the most recent inspection.

Attorney David Carr spoke on behalf of owner Dawn Klippel and occupant Dennis Crow. He stated that Mr. Crow was not present at the Hearing due to harassment claims from Ms. Fontenont that were dissolved after a court hearing. Mr. Carr stated that he is not challenging the findings of the inspection, but rather believes that due to the fact that the owner is planning on selling the property in the near future that this issue is beyond the scope of the Board and is instead a legal matter to be deliberated in court. Mr. Carr stated that the basement unit will not be rented on “Airbnb” again and that the owner is attempting to evict Ms. Fontenont later in the month. Dr. Walsh

asked Inspector Waden how much of the dwelling has been inspected by the Department to which Inspector Waden stated just the basement unit. Dr. Fallon asked Mr. Carr if Ms. Klippel, the owner of the property, was aware of the unit being rented on “Airbnb”. Mr. Carr stated that she was not aware of this initially, but now is aware. Dr. Walsh asked Mr. Carr if anyone else is living in the dwelling and Mr. Carr stated that Mr. Crow is occupying a unit, and there are occupants in the other unit. Ms. Bongiorno reminded the Board that issues related to the use of the basement as a separate apartment fall under zoning bylaws enforced by the Building Department.

Dr. Fallon asked why the unit was given an emergency condemnation in 2012, and now another one is not being issued. Inspector Waden explained that in 2012 conditions observed such as deteriorated asbestos-like material, inoperable heating equipment, and chronic dampness made it an emergency situation. She added that the condemnation order has never been lifted by this Department and therefore the existing order currently stands.

Dr. Walsh stated that this does not appear to be a straight forward case, given the fact that the condemnation order has not been lifted since it was issued in 2012. Mr. Carr stated that Mr. Crow has not fixed the violations noted in the February 7, 2017 Order Letter because Ms. Fontenont has filed a harassment against him and he is thus not making contact with her. Inspector Waden reminded all involved parties that the Board cannot be involved in any legal disputes between occupants and landlords. She explained that because the existing condemnation of the basement unit has never been lifted, this case has been referred to Inspectional Services for zoning enforcement.

Dr. Walsh stated that the jurisdiction of this case falls within the Building Department because of zoning issues. Ms. Fontenont asked why the State Sanitary Code is no longer related to the case. Inspector Waden stated that the State Sanitary Code has been applied to the extent to which it can, but that it is now a legal matter. Ms. Fontenont asked for a copy of the condemnation letter from 2012. Inspector Waden stated that the Department will provide her a copy of the letter. Ms. Bongiorno recommended that the Board vote to refer this case to the Building Department. Mr. Kohlberg stated that Mr. Carr is a personal friend and thus he must recuse himself from all voting and deliberating on the matter.

A Motion was made by Dr. Walsh, which was seconded by Dr. Fallon, to refer this case to the Building Department.

Vote: The Board voted (2 – 0) in support of this motion. Mr. Kohlberg recused himself from the Vote.

Presentation: Noise Bylaw Amendments Warrant Article

Ms. Bongiorno stated that she, other Town officials, and residents collectively researched local communities’ noise bylaws as part of a residential construction study group. They found that other communities have not enforced noise bylaws as much as expected. She stated that over the summer there was noise disruption in Town as a result of a construction project at 108 Irving Street. A developer jack-hammered a rock ledge for a period of approximately six weeks. Ms. Bongiorno stated that this was a public nuisance due to the length of jack-hammering. At that time, an agreement was made by developers and neighbors regarding the time of day in which jack-hammering would occur.

Ms. Bongiorno proposed an amendment to the Noise Bylaw to change hours during which impact devices can be used to between the hours of 8:00 AM – 5:00 PM on weekdays, and 9:00 AM – 5:00 PM on weekends and

holidays. Ms. Bongiorno stated that this current amendment would only pertain to impact devices that are temporarily used during construction. She added that next year she believes it would be beneficial to amend the bylaw regarding stationary sources of noise such as HVAC units.

Ms. Bongiorno introduced John Martin, a noise expert and Arlington resident to explain the findings of the residential construction study group.

Mr. Martin stated that the ordinance is two pronged: the first is related to stationary noise; and the second is related to construction noise which is hard to control and measure. He stated that there is more research that suggests negative public health implications, as seen by military studies, to limit the maximum impact level. Mr. Martin stated that Belmont's bylaw limits impact noise at 90 dB. Mr. Kohlberg asked Mr. Martin to explain the connection between noise regulations and health implications. Dr. Walsh stated that noise falls under the nuisance bylaw. Mr. Martin agreed and added that noise is both a nuisance and health issue. Dr. Walsh asked if the noise ordinance is different than the nuisance bylaw to which Ms. Bongiorno replied yes and stated that these issues fall under the enforcement of the Board of Health. She added that the impact noise at 108 Irving Street fell below 85 dB, with the exception of one noted spike at 91.7 dB. Dr. Fallon stated that the duration of the noise appears to be the issue. Ms. Bongiorno stated that mediation was necessary for the construction work at 108 Irving Street that limited impact noise to 7:00 AM – 4:00 PM during the weekdays with no jack-hammering on the weekends. Dr. Fallon inquired about the leaf blower noise bylaw and Inspector Waden stated that there is a seasonal bylaw limiting the use of leaf blowing.

A Motion was made by Dr. Fallon, which was seconded by Mr. Kohlberg, to support amendment changes to the noise bylaw.

Vote: The Board voted unanimously (3 – 0) in support of this motion.

Presentation: Medical Marijuana Treatment Center Buffer Zone Warrant Article

Ms. Bongiorno explained that she met with Ms. Karen Thomas-Alyea, a proponent of the Warrant Article to discuss potential changes that align the Attorney General's stance on Registered Marijuana Dispensary (RMD) buffer zones. Ms. Bongiorno stated that she, along with Ms. Thomas-Alyea and Police Chief Fred Ryan attended the Arlington Zoning Board meeting on Monday, March 6th to discuss this matter with the Redevelopment Board. Ms. Bongiorno further explained that the hope is for the Redevelopment Board to vote to pass this Warrant Article onto Town Meeting to make the final decision regarding the matter. Ms. Bongiorno stated that the Warrant Article proposes to maintain the current zoning regulation of RMD's, which is allowed in zones B3 and B5, but would prohibit RMD facilities from being placed within a 500 foot radius of athletic playing fields where organized and permitted athletic events occur, licensed childcare programs, licensed residential care programs and public and private schools. She further stated that the RMD facility at 11 Water Street would not be affected by the proposed Warrant Article.

Inspector Waden shared with the Board a map outlining the buffer zones in Town. Dr. Walsh inquired about the inclusion of permitted athletic events in the buffer zone proposal; Ms. Bongiorno stated that these include fields that are seasonally permitted by the Recreation Department, not areas where individual temporary permits may be granted. Ms. Thomas-Alyea explained that the Redevelopment Board has been meeting, in regards to this issue, since October. She stated that the focus of their conversations has been on what the state laws define as areas

where children congregate. Ms. Thomas-Alyea explained that the goal of the proponents is to have Town Meeting vote on this issue so that the original buffer zones that Town Meeting voted in favor of in 2014 can be re-instated. Dr. Fallon asked if the Arlington Boys and Girls Club would be included in the buffer zone to which the answer is yes.

A Motion was made by Mr. Kohlberg, which was seconded by Dr. Fallon to support Warrant Article 9: Zoning Bylaw Amendment/Medical Marijuana Treatment Center Buffer Zone.

Vote: The Board voted unanimously (3 – 0) in support of this motion.

Ms. Bongiorno explained that Inspector Waden, Arlington Youth Health and Safety Coalition Director Ivy LaPlante, and Coalition member and attorney John Scheft will attend the Redevelopment Board meeting next Monday, March 13th to show the Board's support for the Warrant Article.

Dr. Walsh asked if the Redevelopment Board does not vote to refer the Warrant Article to Town Meeting is there another way in which the matter can be discussed by Town Meeting. Ms. Bongiorno stated that question will be referred to Town Counsel.

Ms. Bongiorno stated that Police Chief Ryan's comments at the last meeting were well-received by the Redevelopment Board. She explained that Chief Ryan stated that there are 168 Marijuana cardholders in Arlington and that other cardholders, from other communities, will be drawn to RMD's in Town which will increase traffic and related policing issues, and as a result, future RMD's should be placed appropriately to avoid any issues. Dr. Fallon stated that last week he treated a sick canine who had consumed Marijuana. Dr. Walsh stated that she has patients who get Marijuana from cardholders and a major issue is that medical Marijuana is more potent so it should not be used recreationally. She further added that some of her patients have approached her for addiction programs to help them with their Marijuana consumption habits.

Ms. Thomas Alyea asked the Board, if the Police Department is unable to enforce and monitor public consumption of Marijuana, then should precautions be required by RMD's. Ms. Bongiorno stated that such issues will have to be handled on a community level. Ms. LaPlante added that the Coalition is working on a community-wide approach with youth.

Moratorium-Article 2 of Special Town Meeting Warrant, April 26, 2017:

Ms. Bongiorno informed the Board there is the potential of a three month temporary moratorium to be placed on the opening of Recreational Marijuana Establishments in town. This would push back the opening of any recreational establishments in town to October 2018. This would provide additional time for Arlington to gather information from the state in regards to the local implementation of recreational marijuana establishments.

Ms. LaPlante stated that the town of Westboro recently passed a local opt out Bylaw that will prohibit recreational Marijuana facilities from opening in their community. She stated that 81% of Westboro citizens voted in favor of this opt out.

A Motion was made by Dr. Fallon, which was seconded by Mr. Kohlberg, to support the three-month moratorium on Recreational Marijuana Establishments.

Vote: The Board voted unanimously (3 – 0) in support of this motion.

Discussion: Dumpster Regulations

Inspector Waden stated that the maintenance of dumpsters in Town is connected to the increased rodent activity in our community. She stated that after researching regulations in other communities, it seems that Arlington would benefit from updating dumpster regulations. Specifically, Inspector Waden mentioned that including labeling of dumpsters is crucial to proper dumpster maintenance and timely efforts to enforce dumpster regulations. Additionally, she discussed that other community's regulations, such as Belmont, require permitting of establishments that utilize dumpsters in addition to waste-hauler which allows more leverage of responsibility when enforcing dumpster regulations. Dr. Walsh asked if Inspector Waden is looking to move forward with research and create a template regulation. Inspector Waden stated that she is asking the Board for approval to work on an updated draft of the regulations. Dr. Fallon asked how dumpsters are currently permitted in Arlington, to which Inspector Waden stated that only waste-haulers are currently licensed in Town, not the actual dumpsters that establishments are using. Inspector Waden explained that the current permitting system creates uncertainties regarding who is responsible for dumpster maintenance. Dr. Walsh stated that it appears the current regulations are outdated. Dr. Fallon stated that he thinks aspects of Belmont's regulations such as containing debris in tight trash bags before putting debris in dumpsters and only permitting dumpsters on impermeable ground, (two regulations that are not currently included in Arlington's dumpster regulations), would be beneficial in Town. Mr. Kohlberg asked Inspector Waden if there is a definite connection between the dumpsters and increased rodent activity. He added that he would like more information regarding the connection between recycling practices and increased rodent activity. Ms. Bongiorno asked Inspector Waden if a connection between trash day and location of rodent complaints was ever studied. Inspector Waden stated that this connection was researched but no correlation was found. Inspector Waden explained that during inspections, the Department has seen rodent burrows in close proximity to poorly maintained dumpsters. Mr. Kohlberg stated that he would like the Department to continue to look into recycling as a source.

Environmental Updates:

Inspector Waden provided the Board with an update on three rodent issues in Town.

- Rodent activity - Stratton Elementary School: Ms. Waden stated that she and Health Compliance Officer Sullivan conducted an inspection of the Stratton School and provided suggestions for integrated pest management to the parties involved in the school renovation project. She stated that the Department has provided the school with a pesticide waiver so that a pesticide can be applied to areas of the school property that are not utilized by children. Dr. Fallon asked Ms. Waden where the pesticide application will occur at Stratton to which she responded traps will be located in the unoccupied side of the school that is currently under construction.
- Rodent activity in Arlington Center and the Broadway Plaza areas: Ms. Waden stated that numerous rodent droppings and burrows have been observed and that the Department plans on reaching out to businesses and residents in the area for a collaborative meeting to address this issue. Ms. Waden stated that she will provide the Board with information once the meeting is finalized.
- Rodent activity in Arlington Heights: Ms. Waden informed the Board that she had a meeting with Trader Joe's and Starbuck's to address issues related to rodent control and dumpster conditions.

Inspector Waden explained that she has received multiple inquiries regarding vape shops and similar facilities. Inspector Waden stated that due to the strict tobacco regulations in Town, there are no tobacco sales permits available to open new vape and related tobacco sales businesses. Interested parties have been placed on a permit waiting list if requested.

Restaurant Updates

The following restaurant updates were provided by Inspector Waden:

1. Classic Café has changed ownership
2. Capri has been closed for an unknown amount of time and the Department is unclear regarding what will happen to the restaurant in the future.
3. Digumm's remains closed.

Public Health Nurse Updates

Ms. Waden informed the Board that Arlington had a recently reported Salmonella case in a young resident. The child attends a daycare in Lexington but resides in Arlington. Additionally, Ms. Waden informed the Board that the Town has recently identified a bat that was positive for rabies and that the proper protocol was followed. Additionally, the Health Department issued a press release regarding this matter. Ms. Bongiorno informed the Board that the Department's Public Health Nurse, Aliza Guyer, will be stepping down at the end of March.

Public Comment

No public comment was provided.

A Motion was made by Mr. Kohlberg to adjourn the meeting; this motion was seconded by Dr. Fallon.

Meeting was adjourned at 7:39 pm.